subject if, as we desire to do, we had been permitted to proceed expeditiously with the presentation of our proof. That was the course we were bent on. We were engaging in nothing which any impartial court would regard as improper conduct. We were submitting our evidence. We submitted this long statement to you which you required us to work on over the weekend, and, as Mr. Isserman pointed out, one of these days was the Sabbath; the other was a holiday;

—Ch. Tr. 3420—

but we had to work right through so as to submit this memorandum to you.

Now, I must in all candor say, your Honor, that it is very difficult for us among the defense counsel to believe that the United States Attorney was caught unawares in the request or the direction which the Court made to him to proceed with his proof on an hour and a half's notice—

The Court: Mr. Sacher, you are becoming positively insolent.

Mr. Sacher: Well, I am not. I am stating—

The Court: Now I won't have it.

Mr. Sacher: I am stating what your Honor seems—

The Court: You have charged me with about everything that a lawyer can charge a court—

Mr. Sacher: I am making no charge—

The Court: You are charging me by this innuendo of some sort of connivance with the United States Attorney, and I just will not have any more of that.

Mr. Sacher: Your Honor, I wish to renounce any such intention. I have no such intent. All I am saying to your Honor is that in the midst of the pre-

sentation of our proof, and without any prior notice from your Honor to either side—

—Ch. Tr. 3421—

The Court: You had plenty of warning.

Mr. Sacher: Your Honor, all I can say is that whatever warnings you have given certainly were not justified in dictating the course which you have dictated to us at this juncture. We are calling as we indicated in our memorandum to you today—we were going to call witnesses to establish on the basis of firsthand and personal knowledge the facts in regard to the character of the various areas from which jurors were selected as well as from those from which they were excluded; and among the items which we enumerated in the memorandum presented to your Honor was that which indicated that we would show through a clerk of this court, through judges and others that the jury system was of a character that we have complained of here.

Now, I respectfully submit, your Honor, that at such a pass in the adducement of evidence the interruption of our presentation of evidence and the direction to the Government to put its case in before we had rested and before your Honor has made any declaration as to his opinion as to the sufficiency or insufficiency of the evidence to establish a case, I respectfully submit that this is rather unprecedented procedure.

Now, the point we are making is fundamentally

—Ch. Tr. 3422—

this: we have prepared our order of proof. We were prepared, in deference to your Honor's request and ruling, to proceed with the utmost expedition, be-

cause there is one basic purpose that the defense has in this case, and that purpose is to establish its charges concerning the selection and administration of the jury system in this district. It does not serve the purpose of the defense to delay, obfuscate or obscure the quality, the weight and the significance of that testimony; and I therefore submit, your Honor, that in these circumstances and in the light of our undertaking to move speedily and directly in the presentation of proof, there is no real occasion for the direction your Honor has made. And in that connection let me observe, if your Honor had said on the basis of what we had laid before the Court that you would direct us to call certain witnesses first, then, whether we would like the ruling or not, we would be disposed to regard that ruling as falling more or less within the discretion which the Court has expressed itself as exercising in directing the order of proof. But I respectfully submit that what your Honor has directed deals not with the order. You have destroyed, if I may say so, all order of proof on our part. You have truncated it. You have,

—Ch. Tr. 3423—

for the nonce, taken from us the right to present evidence in support of the serious charges that are contained in this challenge; and in those circumstances I respectfully submit, your Honor, that in the proper exercise of discretion your Honor ought to permit the adducement of further proof relevant and material to the establishment of the challenge filed by these defendants; and in that connection I might say that we are prepared to defer to whatever ruling the Court may make in directing the order in which our proof should be adduced.

Colloquy

Now, it seems to me that in the light of the expression of such a willingness there should be no hesitancy, as I see it, on the part of the Court in permitting the further introduction of evidence. For, as I see it, it seems to me that certainly from here on out it cannot be said by anybody that the defense has not only been willing but eager to present its proof as speedily, as quickly as it can, and with due regard to whatever orders the Court may make as to the order of proof.

And in these circumstances I respectfully request of the Court that it reconsider its earlier direction and permit us to proceed with the adducement of our proof in support of the challenge.

The Court: After what has been going on here —Ch. Tr. 3424— for the last four weeks I think it would be a serious dereliction of duty on my part had I ruled otherwise.

Mr. Gladstein: Your Honor, I wish to object and to speak very briefly on behalf of my objection to the ruling which the Court has made terminating for the moment all right and opportunity of the defense to continue and complete the presentation of evidence in support of the challenge.

The charge that we make, as I need not remind the Court, is a very grave one, and would not and should not ever be made lightly. We did not make that charge lightly. We gave earnest thought to that charge, and gave vigorous effort to ascertain the evidence that exists that supports that charge. And when that charge was finally made and embodied in the papers that were sworn to and are on file here, that happened

only as a result of and after we had become convinced that given a fair opportunity to prove our contention, we would do so up to the hilt.

Now, we realize that the law places upon us the burden of proving those charges by a preponderance of the evidence. We gladly assume that burden. We willingly assume that burden; indeed, we demand the right to discharge to completion the burden we have

—Ch. Tr. 3425—

undertaken to discharge in the presentation of this case.

If the United States Attorney were concerned, as he might well have been, with the most serious implications of our charge; if, indeed, he had manifested any desire to be partners with us and with the Court in a true, impartial investigation of the facts rather than to proceed as though we were adversaries, as though we were trying a damage suit —if it had been different then there might be wisdom or justification for the suggestion on the part of the Court that Mr. McGohey proceed now—

The Court: It is no suggestion. It is no suggestion. I directed that that be done, and it will be done.

Mr. Gladstein: Yes. But I wish to say that everything that has happened in this case so far demonstrates that although this is the kind of charge which should inspire the Court to become an alert and eager participant in the search for the truth, so that the confidence of the people in their courts and in the administration of justice that occurs in their courts will not be shaken—although that should be the fact, it has turned out rather plainly, if the Court please, that we are engaged in a typical type of legal contest

in which you have one side pitted against the other

—Ch. Tr. 3426—

with the Court acting as a sort of referee. And if that be the case, as it is, we ask no favors, but we don't like the rules of the game changed in the middle.

In all such contests, he who starts out to prove, as he has a right to prove, a contention, is given the opportunity, because he has the right, to pursue his proof up to the point where the Court says—as your Honor did not say; I did not hear your Honor say: "Gentlemen, there is adequate proof in the record on the part of the defense. That will establish the validity of the challenge unless the Government comes in with proof that rebuts it." And if your Honor had said, "Mr. McGohey, at this point I have received enough evidence to warrant a finding that a prima facie case has been made out by the defense unless the United States Attorney rebuts that case, and hence I am calling on you, Mr. McGohey, to rebut that case, in view of my statement, in view of the finding I make that a prima facie case has been established"—if your Honor had said that then there might be some warrant for your Honor's ruling.

But since not only has your Honor failed to make a finding that way, that the defense have established a prima facie case in support of our challenge, but,

—Ch. Tr. 3427—

to the contrary, every statement, every implication, and even those things that emanate from the Court that do not appear reflected in the record—all combined to give the clear impression that your Honor is not of a mind to make such a finding at this time—then I submit it is not a matter of discretion of the

Colloquy

Court. The Court has no discretion at this point under the statement that it is simply ordering how the proof shall be brought in. The Court has no slightest discretion whatsoever to say at this point to us, absent such a finding that I have referred to, that we shall be cut off from introducing the balance of our proof and that Mr. McGohey shall go ahead.

—Ch. Tr. 3428—

The Court: That you shall what? And that Mr. McGohey shall go ahead? Let me hear that part.

(Record read.)

The Court: You are not cut off from introducing the balance of your proof at all.

Mr. Gladstein: At this point—

The Court: I am merely regulating the order of proof here. You are cut off from doing it now.

Mr. Gladstein: That is my point.

The Court: Continuing what you have been doing for the last four weeks, that you are cut off from.

Mr. Gladstein: That is exactly my point, that what your Honor has done is to prevent the proponent of this challenge from completing in the orderly manner in which due process of law contemplates that it shall be done the proof of our case.

And I desire to point out further for the record as grounds for my objection that we apprehend that Mr. McGohey will call to the witness stand as his witness one or more of the people whom we have subpoenaed as witnesses to appear and testify for the defense. And I know from my experience as a lawyer, and I am sure Mr. McGohey does, and I am

certain the Court is not unaware of this as a fact, that given a witness who is carefully led and directed in certain areas by Mr. McGohey the testimony may

—Ch. Tr. 3429—

be developed quite differently and with perhaps even different content than if that witness were put on the stand by us, though he be an adverse and hostile witness to us.

We are not satisfied that the law places upon us the burden of refraining from cross-examining a hostile witness but we take the law as it is, and if the law requires that we pursue in a certain manner our examination of an adversary witness we are content to accept the law and abide by it, but we insist upon our right to develop our case and present the evidence in support of our case as the law contemplates that it shall be done.

I therefore submit that when your Honor says that he is taking this step and ordering Mr. McGohey to proceed and by the same ruling ordering us to desist from putting in any further proof at this point, your Honor is not exercising any discretion as to the order of proof but is committing plain, clear reversible error.

Now I want to say that if your Honor does not reverse this ruling, as each witness is called by Mr. McGohey who—I do not know his witnesses—who, as it turns out may be one or more of those whom we had planned to call, I shall object to Mr. McGohey

—Ch. Tr. 3430—

proceeding with those or any of those witnesses as his. I state that now so that the Court shall be apprised of one of the reasons for my earnest submission of this argument.

Colloquy

Mr. Crockett: If the Court please, I should like to state on behalf of my clients our objections to the order entered by the Court immediately at the conclusion of the morning session. In my opinion the order amounts to an abuse of discretion on the part of your Honor, and I should like to point out in one particular respect in which I think there is an abuse of discretion.

We have made it plain from the outset that the whole theory of presentation of our proof had to do with showing the product of the illegal discrimination that we had alleged in our challenge. We proposed to show and we did show evidence indicating that there had been geographical, occupational and racial discrimination in the selection of jurors here in the Southern District of New York. It was further within our contemplation, once that pattern had been established, to call the clerk to the stand for the purpose of ascertaining from him how he could in compliance with the requirements of the law come up with an end product which indicated so much disparity between what the law required and what his methods had produced.

The Court is aware, I am sure, that the other day —Ch. Tr. 3431— at the suggestion of your Honor we obtained photostatic copies of certain records in the clerk's office. Those records indicated that the clerk was keeping separate lists of colored jurors. The memorandum which we filed with the Court this morning indicated very clearly the method by which we expected to prove the existence of discrimination because of race and color in the selection of jurors.

Colloquy

I cannot help but wonder, your Honor, whether or not it is an abuse of discretion on the part of the Court at this time that just as we are on the threshold of proceeding to present evidence of this illegal racial discrimination the Court enters an order to the effect that we shall cease right now and permit the Government to go on with its proof, which obviously will be an attempt to explain away the indices which we have already pointed out that indicate racial discrimination.

Mr. Gladstein: On this last, if I may just add a supplement to what Mr. Crockett has said: your Honor will recall that on the day when the clerk and some other representatives from the court attache's office came down here with certain lists of names of people who went into the jury system, that I identified for the record just one or two and then your Honor made an order that we could have some of those photostated—

—Ch. Tr. 3432—

The Court: Yes. You had huge stacks of documents there.

Mr. Gladstein: Yes, because huge stacks of documents were provided to the clerk by private, unauthorized organization such as the Federal Grand Jury Association, as we will show. Now, I did not create the huge stacks. That is the way it was. And, of course, when we ask for the records, if huge stacks come out it is because that is the way it was created in the office.

But your Honor will recall that when the recess occurred and I was in your Honor's chambers with Mr. Shapiro making notations as to some of those

records, there was one particular one that we were making notes of and it had the legend at the top "Colored List," and your Honor asked me what that meant, and I recall looking up to your Honor and saying, "That is the way in which the Negro people were segregated in the clerk's office by being put on a separate list."

Now, this I state merely in support—

The Court: That is what you said.

Mr. Gladstein: Well, we will see if the clerk denies that. But my point is that we have the right to examine him, his deputies, the jury commissioner, and as we said at the outset, one or more or perhaps all

—Ch. Tr. 3433—

of the judges of this court. This is not unusual. In matters of this kind, a challenge of this kind, it has been known that hundreds of witnesses have been produced.

The Court: The way this thing has been conducted, Mr. Gladstein, is something that I never thought I would see in a court of justice, never.

Mr. McCabe: I will agree, your Honor, on that last point; the way this case has been conducted is one which I certainly hoped that I would never see in a court of justice.

The Court: You mean the way it has been conducted by me, I take it.

Mr. McCabe: I mean that exactly.

The Court: I have in mind the way you lawyers for the defendants have acted and what you have done and what is already on the record, and with respect to which I made a finding, which I only made with the utmost reluctance and regret, as I stated at

the time. But that is all in the past; and what you did will remain and cannot be eradicated.

Mr. McCabe: I will say that so far as I am concerned and so far as I recall anything on the part of the attorneys for the defendants being concerned, there is nothing which we wish to have eradicated, but we will leave it to a higher court perhaps to eradi-

—Ch. Tr. 3434—

cate some of the errors to which I refer.

The Court: Well, that sort of threat does not have any effect upon me.

Mr. McCabe: It is not a threat at all.

The Court: I have been subjected to every kind of vituperation here and you might just as well tell me how I am going to be reversed and all that. It remains to be seen what will be done by higher courts, and your telling me about that isn't going to affect my judgment. I am trying my best here to rule justly, to rule impartially, to protect the rights of these defendants despite the conduct of their counsel, and I shall continue to do that.

Mr. McCabe: I rise simply to say—to except to your Honor's characterization that anything the defendants' attorneys have done is sabotage. Sabotage there has been, but as I say I think it has been a sabotage of the entire system of justice in this court, and I say that we are the only ones who seem to be interested in that.

Mr. Crockett: I should like to enter my objection to the Court's remark to the effect that your Honor had been engaged in protecting the rights of the defendants despite the conduct of their counsel.

The Court: And I shall continue to do that.

Colloquy

Mr. Gladstein: Well, now, may I ask your Honor this: does your Honor really mean that the record

—Ch. Tr. 3435—

shall indicate that it is a protection of the rights of these defendants for your Honor to say when I offer a piece of evidence, "Mr. Gladstein, that would be material, that would be relevant, that would help to prove your case, but I am not going to let you put it in evidence because I don't like the way you and your colleagues lawyers have been behaving"?

The Court: Did I say that?

Mr. Gladstein: In effect, yes, because you have absolutely rejected and you have prevented me from introducing evidence—

The Court: You approach the Court in this threatening way; I don't quite understand what you mean by it. But I do not desire any more repetition of your objections, and we will now go ahead.

Mr. Gladstein: When you say, approach the Court, your Honor, did you mean because I walked—

The Court: I mean, you walked right up near the bench pointing at me as though it was something horrible that I had done. I am not going to stand for that sort of thing, Mr. Gladstein.

Mr. Gladstein: I want the record to show that in the presence of several hundred people it was perfectly obvious that I was making no threatening or menacing gesture at your Honor. I was speaking to the Court.

—Ch. Tr. 3436—

The Court: You read what you said in the record and put it together with my comment and see whether my remark was justified or not.

Mr. Isserman: I would like to have the record note that at the point when Mr. Gladstein was talking to your Honor, which your Honor described as being near the bench, that he was alongside of the jury box.

The Court: Well—

Mr. Sacher: I would like to add that he was at a spot where he has been frequently in the last few days in the examination of the witness.

The Court: Very well, Mr. McGohey, you may proceed.

• • • • •

—Ch. Tr. 3599—

New York, February 15, 1949

• • • • •

Q. Suppose I came into your office and at the end of the filling out of my questionnaire you put the word "Deferred" opposite my name—

Mr. Gordon: Obviously Mr. Gladstein is not qualified for jury service—

Mr. Gladstein: Not a resident, but I will be soon.

Mr. Gordon: And also you purport to be a practicing attorney.

Mr. Gladstein: I withdraw that. I didn't think that Mr. Gordon would get so technical.

The Court: Well, it is a good point, isn't it?

Mr. Gladstein: Do you think so, Judge?

The Court: Well, it doesn't seem to me that it is a

bad one. The witness might naturally misunderstand. It is easy to put a hypothetical case without making it personal.

Mr. Gladstein: Well, even if I am a lawyer, not a resident, they could have done a lot better with people like me in the jury system than what they did. However—

Mr. McGohey: I move to strike it out, and I am not sure that it is so.

—Ch. Tr. 3600—

The Court: Mr. Gladstein, I noticed a tendency on the part of a number of counsel to make those comments, obviously for the benefit of those present in the courtroom, and, frankly, I don't like them. I hope you will try to desist.

Mr. Gladstein: I will restrain myself.

* * * * *

New York, February 16, 1949

—Ch. Tr. 3674—

* * * * *

Mr. Gordon: Wouldn't it save time if he asked the witness what is shown on the exhibit?

Mr. Gladstein: Just a second. That is all right with me, except every time I ask the witness to testify as to what is shown on the exhibit before it is in evidence, then there is an objection. Then when it is introduced in evidence and I ask the witness to testify about that, then there is an objection.

Mr. Gordon: I withdraw the suggestion. Go ahead.

McKenzie—Cross
Colloquy

—Ch. Tr. 3675—

The Court: Mr. Gladstein, I hope I am misunderstanding the purpose of that comment. It does not seem to me that you needed to do it. It seemed to have just one of those little fishhooks in that you so often sprinkle in your conversation, and I suggest that you omit them, if possible.

Now, you have been allowed every reasonable latitude here, and it is my intention to give you every reasonable latitude to bring out whatever you want to bring out—

Mr. Gladstein: Very well.

The Court: (Continuing) But I cannot continue to do it indefinitely, and if I get the impression that sarcastic comments and criticisms of the Court by innuendoes are being dropped in here and there, it is perhaps going to affect my discretion somewhat in the rulings I make on the extent of your cross-examination.

* * * * *

New York, February 17, 1949

—Ch. Tr. 3869—

Q. Did you send out notices to Putnam County because you needed additional jurors? A. We are always sending out notices—

Q. Did you, yes or no, for that reason?

Mr. Gordon: Let him answer that.

Mr. Sacher: It is the second try at it. I think I am entitled to an answer.

The Court: Do you think it is important, Mr. Sacher?

Mr. Sacher: Yes. I have another question to follow up with.

Mr. Gordon: The witness started to say, "We are always sending out notices," when Mr. Sacher interrupted him.

The Court: I know.

Mr. Sacher: What is your Honor's ruling on it?

The Court: Isn't it clear that they always desired to get additional jurors? What else could be the point of sending the notices out?

Mr. Sacher: Why can't he answer it then, like an honest man would?

The Witness: We started to send—

The Court: He is wondering that there might be something about it that does not meet the naked eye.

Mr. Sacher: There probably is, but that is no

—Ch. Tr. 3870—

business of his.

The Court: Well, maybe so, but you ask why he is hesitating. I have a little experience. I am watching and listening here, and I do not think it impairs a person's credibility when he begins to think a little bit before answering the question, particularly one that seems so obvious as that one; he wonders whether or not there isn't something the matter with it.

Mr. McGohey: Official [a fishhook?], perhaps.

The Court: So let us take it that he said that he was trying to get more jurors. Now, go on with that next question that is going to be so good.

Mr. Sacher: Your Honor's sarcasm apparently reached the reporter of the World-Telegram. I recognize his raspy gurgle there.

Mr. Gordon: May that be stricken out, your Honor? I object to further examination of this kind by counsel, and if that is as much as the cross-examination is going to consist of, I would like to go back to redirect.

Mr. Sacher: No, that isn't all.

The Court: I sustain the objection.

By Mr. Sacher:

Q. Had you sent any notices to Putnam County prior to the month of May 1947, as appears from page 4 of Exhibit 179? A. Had we sent any notices?

—Ch. Tr. 3871—

Q. Yes. Did you before May 1947 ever send any notices whatever to Putnam County? A. Back in 1940 the Directory of Directors had names from all those outlying counties.

Q. I didn't ask you that. I asked—

Mr. Gordon: I submit that he has answered that.

The Court: Yes, I think he has answered it. Ask another question. I am getting the impression now that just because this reference to Putnam County is here that you decided to play around with it for an hour or so—

Mr. Sacher: No.

The Court: —and use up time. I am not going to have it.

Mr. Sacher: Let me put the question.

I want to except, by the way, to being ordered to move from question to question. I want to explore this briefly, not for a length of time.

The Court: If you think these cracks about the voice of a reporter that you seem to recognize are helping you here, you are making a big mistake. I consider that sort of thing frivolous and diverting and entirely inconsistent with the dignity of the court, and I am having a great difficulty in putting a stop to it. And I don't know how it is, but you are perfectly incorrigible. You have such a sense of your

—Ch. Tr. 3872—

own importance and your own conceit that nothing will put you down.

Mr. Sacher: I think that is absolutely unwarranted.

The Court: Well, it may seem so to you, but I am going to put a stop to that sort of thing—wise-cracks, flippant remarks, that sort of business all day long, I won't have it. It may seem funny to you, but I do not consider this a place for that sort of thing.

* * * * *

—Ch. Tr. 3921—

Mr. Crockett: If the Court please, I believe the record already shows that all of the history cards in the active file are present here in court. I would like

to request, with the Court's permission, that the history cards for each person who is named on Exhibits 159, 160, 162, 163 and 226 be deemed marked in evidence. Those numbers that I refer to are the so-called "Colored" list.

Mr. Gordon: That is objected to, your Honor, unless there is some point to it. It is just time-consuming.

—Ch. Tr. 3922—

The Court: You see, those are the five lists of colored names, that is, names of colored persons, and my disposition is to allow complete evidence as to all of those on those lists to find out whatever may be found. Now, I do not want to just deem them in evidence without my looking at them, because I have been looking at everything here as it goes along.

Mr. Crockett: May I suggest that Mr. McKenzie's assistant can be picking them out while we go on with this cross-examination.

The Court: Yes, but when do you think I am going to be looking at them?

Mr. Crockett: No; I mean as soon as he gets them together then we can pass them up to your Honor or we can take it up in the morning.

The Court: Well, I think we will start with two of them and see what we find, and then if there is some reason to go beyond that I will permit it to be done.

—Ch. Tr. 3923—

Mr. Crockett: I can explain to the Court that what I am trying to find out is how many of those on that

list became jurors, actually qualified for jury service; secondly, which ones qualified as grand jurors and which ones qualified as petit jurors. I think that information is obtained from the history cards.

The Court: Suppose, while we are discussing it, suppose we found that it was in any proportion you choose to assume, what inferences might one derive from that?

Mr. Crockett: I am not concerned about the pro-

—Ch. Tr. 3924—

portions, your Honor. I want to find out whether or not any of them qualified for the grand jury from that list.

Mr. Gordon: Your Honor, I object to that as completely irrelevant to anything that could possibly be raised.

The Court: Well, it is beginning to give me the impression that I had last week of an endless chain; whatever you find then that is always the springboard for something else that may be found, and you go on and on and there is never any end, and I very much dislike curtailing proof when you get into the actual workings here. I want to give every reasonable opportunity to show anything that is wrong there. But it looks to me as though it was just a fishing around in the hopes that something or other might be found that would lead to something else.

But, anyway, I am going to let the cards on those two lists be got out, and then I will take a look at them and we will see.

McKenzie—Cross
Colloquy

The witness, Mr. Sacher, has now got that memorandum here, and I take it you would prefer to wait until Mr.—

Mr. Sacher: May I see the memo, however, in the meantime?

—Ch. Tr. 3925—

The Court: Yes, you may.

Mr. Gordon: May I call something to your Honor's attention?

The Court: Yes.

Mr. Gordon: Right at the beginning of the cross-examination of the witness by Mr. Crockett he called for the qualification sheet and the card of Richard—

The Court: S. Bair.

Mr. Gordon: —Bair, which was marked Exhibit 184-A and B.

The Court: That is right.

Mr. Gordon: And that is one of these sheets that has a C on it, and the history card shows that the man is a grand juror and that he served in 1944 and 1947 on the grand jury.

The Court: Oh. Well, then I will take back that other direction.

You knew all the time there was one that was a grand juror.

Mr. Crockett: No, I did not. And I would like to see that questionnaire.

The Court: Well, take a look at it.

Mr. Crockett: But my point is to find out how many people on these other exhibits qualified as grand jurors.

McKenzie—Cross
Colloquy

—Ch. Tr. 3926—

The Court: I am afraid it is some more of this trifling.

Now, you need not take any of those cards out, you just leave them alone for the time being.

Let Mr. Saeher see that memorandum.

* * * * *

—Ch. Tr. 3945—

Q. Who are the people during 1947 and 1948 who have been making the markings in these lists of registered

—Ch. Tr. 3946—

voters? A. A Mr. Ward, deputy court clerk.

Q. First name, please? A. Thomas Ward; a deputy court clerk.

Q. Who else? A. A Mr. Rexrode.

Q. Full name, please? A. Charles Rexrode.

Q. Yes? A. Mrs. Florence Fitton.

Q. Is she a relative of yours by the way? A. Of mine?

Q. Yes. A. No, sir.

Q. Is she related to the clerk?

The Court: Suppose she were, what of it?

Q. Is she related to the clerk? A. She is not related to me.

The Court: I am not going to permit that. I don't understand that kind of thing. Suppose she were his sister, what of it?

Q. Who else, please, Mr. McKenzie? A. Mrs. Stevenson.

Q. Who else?

Mr. Crockett: First name?

Mr. Gladstein: Do you want to give the first name of Mrs. Stevenson?

The Witness: That I don't know, the first name of Mrs. Stevenson.

Q. You don't know? A. No. I believe there was Mr. Leary.

Q. First name.

—Ch. Tr. 3947—

Mr. McGohey: Your Honor, what is the materiality of this?

The Court: Well, I am going to find out. Maybe they want to subpoena all these people.

Mr. Gladstein: I might. It is possible that the recollection of one of them might be better on the subject than Mr. McKenzie.

Mr. Gordon: Your Honor, unless there is some further cross-examination which is proper or relevant, I am going to object to this and ask that we go on with the proof. That remark certainly was uncalled for.

The Court: Yes, it does seem to me of getting back to that old routine of just dragging, dragging, dragging; and if you are just going to ask the witness about all the different people around the court house—

Mr. McGohey: And his relatives.

The Court: —and then plan to serve subpoenas on everybody to keep the thing going indefinitely, I will find some way to stop it.

Mr. Isserman: Now, if the Court please, I am going to object to your Honor's characterization of the cross-examination—

The Court: Yes, you are always helpful, Mr. Isserman. Go ahead.

Mr. Isserman: I would like to object to your

—Ch. Tr. 3948—

Honor's remarks on the ground that the inquiry from a witness on the persons under him who did things in connection with jury service is completely relevant and proper. There is no indication or suggestion that every one of those persons is or will be subpoenaed, but on cross-examination we are entitled to know the persons who worked on the selection which is on review before the Court. We are entitled to pursue this cross-examination, and on behalf of the clients I represent, while we have made every effort here not to duplicate, and it is not our intention to duplicate, I say that I desire and expect to have the right to cross-examine this witness to the point where the essential matters which I believe—

The Court: You are going to cross-examine him too?

Mr. Isserman: I certainly am, your Honor, on behalf of my clients.

The Court: Well, we will see.

Mr. Isserman: We will see about that. I have

matters which have not been touched on by the others.

The Court: Better let Mr. Gladstein take care of it at the moment, and then when you start cross-examining you will have enough to do then.

Now, go ahead, Mr. Gladstein, with the rest of

—Ch. Tr. 3949—

those books and get the business here.

* * * * * *

—Ch. Tr. 4098—

New York, February 18, 1949

Mr. Sacher: May it please the Court, I wish to interpose objection to your Honor's limitation of cross-examination on one very specific ground and on a number of general ones:

The specific ground deals with the memorandum which your Honor ordered the witness, Mr. McKenzie, not to produce yesterday until such time as your Honor—

The Court: That is right, and he had it here after the recess of 3.30 and you had it in your hand for about an hour or so.

Mr. Sacher: Yes. And I would like to point out to your Honor that it was handed to me at the time that Mr. Gladstein was engaged in cross-examining the witness; that Mr. Gladstein had not completed

—Ch. Tr. 4099—

his cross-examination yesterday; that he did not complete it until this morning; that I, out of deference

to the Court's ruling and its insistence upon observance of the procedure which it had outlined—

The Court: I never insisted that you should go in any order. In fact, I have let you lawyers take such order as you chose between yourselves, and I felt I would have a lot less trouble if I did that. Rather than trying to have you go in some order, which would only make for confusion and disturbance, and be bad for you, I thought it was much better to leave you alone, which I had done.

Mr. Sacher: I thought it was better to leave your Honor alone for a little while today in the hope that after the examination in main had been completed by counsel—who, by the way, each act independently on behalf of thier own clients—

The Court: I know your view is that there has been no concerted action, but I have found on the contrary that there has been concerted action, wilful and deliberate concerted action for delay, and I have found plenty more of it this week.

Mr. Sacher: Your Honor, I ask for the opportunity to address objections—

The Court: I know.

—Ch. Tr. 4100—

Mr. Sacher: —and I did not extend an invitation to have those objections interrupted—

The Court: Well, you see, I don't have to wait for an invitation.

Mr. Sacher: I realize that, your Honor. In that respect you have something of an advantage over me.

The Court: Yes.

McKenzie—
Colloquy

Mr. Sacher: But I would like to make this observation, that the fact does remain, no matter what may or may not be said, that I was denied the opportunity to examine Mr. McKenzie concerning a most material item, namely, the item as to when he sent this gentleman, Mr. Rexrode, to the Public Library to examine Poor's Directory of Directors.

The Court: That vital fact.

Mr. Sacher: Well, I will tell your Honor something: I will ask you for the opportunity at least to place that exhibit into the record so that you or the courts above may see how vital it might have been.

The Court: Let us not bear about the courts above.

Mr. Sacher: I withdraw that.

The Court: You have such a nice way of telling me what the courts above are going to do. Now let us worry about what we are going to do, and let

—Ch. Tr. 4101—

the courts above—

Mr. Sacher: I don't think there is any need to worry about it. Your Honor has given indication from the first day we got here as to what the courts below will do; and so we are like those poor people, the meek, who if we can't get anything on earth, hope for something in heaven, you see, up above.

. . . . . .

—Ch. Tr. 4107—

. . . . . .

Mr. Crockett: If the Court please, I desire to object on behalf of my clients to the ruling made by

the Court curtailing our right to further cross-examination of the witness. I submit that that ruling amounts to a denial of due process of law to my clients under the Fifth as well as the Sixth Amendment, in that it denies to my clients and to myself the opportunity to effectively represent them, an opportunity to which all defendants in a criminal trial are entitled to under the United States Constitution.

I also wish to object to the ruling made by the Court near the close of the session yesterday upon the occasion when I requested permission to examine certain history cards with reference to names which appear on certain lists submitted to the jury clerk and already offered in evidence. I think that was a most arbitrary—

The Court: You mean that I refused to let you look at papers that were in evidence?

Mr. Crockett: I mean precisely that—not the

—Ch. Tr. 4108—

papers that were in evidence, but the cards which related to those papers that were in evidence.

The Court: Oh, that is different.

Mr. Crockett: —when those cards were present right here in the courtroom not more than five feet away from the witness stand, and when I might very well have walked over there and examined those cards without in any way interfering with the conduct of the trial.

The Court: Well, you probably remember what was discovered in the colloquy about that. You made a representation to the Court which turned out not to be the fact.

McKenzie—
Colloquy

Mr. Crockett: I deny the Court's statement that I made a representation to the Court which turned out not to be the fact.

The Court: You said that you had to get those cards to see whether any one of those persons had ever been on the grand jury, thus giving me the impression that you did not know that any of them were on; and Mr. Gordon walked over and picked out some of the papers already in evidence on which were one of these very persons, and there was the blue card showing that he was a grand juror or had been, and you must have known it. So, naturally, I took that into consideration.

. . . . . .

—Ch. Tr. 4116—

Mr. McCabe: I would like to say to your Honor that I really have come to believe that the constant repetition by your Honor at intervals which are almost as regular as the tolling of Big Ben—and I mean nothing personal in the allusion—or the eruption of Old Faithful out in Yellowstone Park, or wherever it is—these come at stated periods. I think you can pick 11.20 and 3.20 when these statements come that we are delaying; we are doing nothing; your Honor has seen nothing in the record. I say, I don't want—

The Court: What is the point of those times, of those particular times?

Mr. McCabe: 11.30 I think is the deadline for the afternoon papers, your Honor, and I think around 3.20 is the deadline—

—Ch. Tr. 4117—

The Court: Well, that is something I had no idea of, and I must say you have got an ingenius mind to suppose that something was said for such a purpose. I think you ought to be ashamed of yourself.

Mr. McCabe: Your Honor, I would like to make one closing remark: that is that I think what your Honor has overlooked here has been the fact that 11 men are under indictment, which we are attacking, and which involves penalties of ten years in jail. I think that when the defense in that case as a preliminary move makes an attack on the very system of the selection of the grand jurors which indicted those men, I think that that attack should not be frustrated by mere desires to conserve time; nor do I think that that is the reason.

Whatever pride I have in the last couple of hundred years of this country is wrapped up in the law; whatever pride I have in the last 26 years is wrapped up in a devotion and an affection for the law. Whatever pride I have for the next few years is wrapped up in that. And for years I have been talking to clients and telling them that this law of ours, its institutions, is a pretty sacred thing and not to be tampered with. I have had the occasion—

The Court: And if the judge disagrees with you he is prejudiced.

—Ch. Tr. 4117a—

Mr. McCabe: —I have had occasion to represent many persons who have chosen paths outside the law, and in pointing to them the error of their ways, I

had occasion on many a time to assure them that they were going to get a fair trial. I am thoroughly devoted to that, your Honor. But it goes beyond this case—

—Ch. Tr. 4118—

The Court: Of course, you abandoned all thought of that, you and your colleagues, long ago here because you charged me again and again with corruption, bias, prejudice and having something to do with the system that I had nothing to do with. So I understand thoroughly what you think about me. Now, I can't help that. I must do my duty as best I can. So if you want to go on and call me some more names, go ahead and do it. It may come within part of your duty as you see it, and certainly it would be relevant to the case, and I am not going to stop you, so go right ahead and call me anything you want.

Mr. McCabe: I have not abandoned all hope, your Honor. Locus poenitentiae is a part of my whole being.

Mr. Gladstein: Your Honor has asked each of the defense attorneys to state—

The Court: No, I have given you an opportunity if you desire to object and protest. I thought from prior experience that you probably would each desire to do so.

Mr. Gladstein: (Continuing) each of the attorneys to state such grounds as he has to object to the ruling that terminates the cross-examination.

McKenzie—
Colloquy

of Mr. McKenzie. The Court also granted me leave
—Ch. Tr. 4119—
upon my request this morning, to address myself to the ruling of the Court by which I was denied the opportunity to have produced here certain documents which were within the possession or custody of the witness McKenzie.

That the Court is not concerned with the consumption of time is evident from the fact that during the past 35 or 40 or 45 minutes, perhaps longer, as each of the four attorneys who preceded me attempted to present his statement of objections, the Court constantly and frequently interrupted for the purpose of—

The Court: If you expect I am going to sit here like a bump on a log while they make statements that are absolutely not so, I can tell you now I won't do it.

Mr. Gladstein: I desire—

The Court: There is no rule I ever heard of that a judge is supposed to sit silent while the attorneys flay him.

Mr. Gladstein: I desire to make an orderly, logical presentation of what I have to say,—

The Court: Go ahead and do it.

Mr. Gladstein: (Continuing) —in opposition to the Court's ruling, two rulings; one which terminates the cross-examination, the other which prohibits or prevents us from having access to the documents that I called for.

McKenzie—
Colloquy

—Ch. Tr. 4120—

The Court has said that there has been no proof of discrimination. I do not wish to argue any point at this time, but for the purpose of understanding the basis of my objection it is necessary for me to point out that Mr. McKenzie has admitted here that for an entire period of two years all through 1947, all through 1948, while he had in his possession the registered voters lists for every Assembly District in Manhattan and in the Bronx, and while he used liberally certain of these Assembly District lists, particularly those which are located or which refer to areas within the Silk Stocking District, within the 17th Congressional District, he consistently and persistently did not use any single one of the four registered lists dealing with the 11th, 12th, 13th and 14th Assembly Districts in Manhattan, of which the Court took judicial notice—

The Court: Are you addressing yourself to my ruling in cutting off the cross-examination?

Mr. Gladstein: I am. (Continuing) of which the Court took judicial notice that these four districts are represented by Negro Assemblymen in the State Legislature.

Also, the clerk admits that during that entire period of two years, although there was available to him the registered voters lists for the Fourth and

—Ch. Tr. 4121—

Sixth Assembly Districts of Manhattan, those are the two in the Lower East Side where the poor Jews reside, not one name was used from either of those two registered lists.

McKenzie—
Colloquy

The Court must also be aware of the fact that Mr. McKenzie has testified that from 1945 to 1947, which brings it back another two years, he used the registered lists for one Assembly District in Manhattan and he is unable to identify it, one only, and one for the Bronx, that one being the one that embraces the Parkchester housing development.

So we have a period of four years' continuous, systematic pattern established by the testimony of the Government's witness.

We also know from Mr. McKenzie that from 1943, when he came back from the Army, to 1945, he sent out no notices of any knid that are here reported because he had certain ones accumulated; and we know that from 1940 to 1942, based on his own testimony, he used lists and sources from which he got his names of jurors, lists provided by the Federal Grand Jurors Association, lists in which they had the temerity to state whether you were black or white. We also know that—

The Court: I never could see what was wrong with that. That to me is the most extraordinary

—Ch. Tr. 4122—

contention. According to the testimony of Mr. McKenzie, Mr. Follmer, the clerk, told him that somebody had wanted to find out how many Negroes were on the jury cards and that he was told, as they had no way to indicate it up to that time, to make some indication on these questionnaires, which he did; and he did it from that time on. Now, I think there must be something wrong with my thinking apparatus if merely putting those C's on there for

that purpose is an illegal act that makes a whole jury system open to such an attack.

Mr. Gladstein: And we also—

Mr. Crockett: Your Honor, the very fact that you can't see anything wrong with that is why at the outset of this case we asked that you be disqualified from presiding.

The Court: You see, it is what I said before, that if the Judge disagrees with you, then he ought to be disqualified, so that you always win. It is the funniest thing I ever heard of.

Mr. Gladstein: And we also know, if the Court please, that during this period of time from 1940 through 1948, although at no time was any effort made by the clerk to obtain members of trade unions to serve on juries, hundreds upon hundreds of names were obtained from the directory that contains the names of the corporation directors of this commu-

—Ch. Tr. 4123—

nity so that they could be brought into the grand juries and petit jury service. Now, these facts were obtained from an adverse witness, from a witness who was produced by the Government. Your Honor knows that on cross-examination—

Mr. Gordon: I wonder if Mr. Gladstein could stay off my neck. I don't wish to be associated with him in any way.

The Court: Go ahead, Mr. Gladstein. Don't be getting right in the back of Mr. Gordon's neck. He finds it bothers him.

Mr. Gladstein: Your Honor knows that when a jury clerk takes the witness stand in a matter of

this kind he is recognized in law as an interested witness. It is recognized by the law, very sensibly, that he is understood to feel that he is on the defensive and that he intends when he takes that witness stand to defend his conduct and, if necessary, to do so by concealment or by failing to tell all the truth, or by being misleading, for example, as he has been even by the concession of your Honor with respect to the filing of one affidavit, and so—

The Court: Now, I cannot remain silent when you say those things. I never made any such concession, and it is the way you lawyers were doing earlier.

—Ch. Tr. 4124—

Every time Mr. McGohey or Mr. Gordon said anything you jump up and say he conceded something. All I said was that that statement was not false, that the most that could be argued was that it was misleading.

Mr. Gladstein: Just what I said.

The Court: And you say therefore I concede that it is misleading. Now, I don't know why you keep doing that, but however that may be, when you do it don't expect that I am just going to sit here. Sometimes I can sit quietly and listen to these fulminations and say nothing, but once in a while I just can't sit quiet.

—Ch. Tr. 4286—

New York, February 25, 1949

* * * * *

The Court: Now, gentlemen, I have formulated in my mind ways to bring this challenge to a close, and from now on I will hear no argument on motions or on objections to evidence except where I indicate my desire to have argument, and I will announce further things that I have considered a liftle bit later on.

* * * * *

—Ch. Tr. 4397—

* * * * *

Mr. Isserman: I want to state my objection, if the Court please, to the termination of cross-examination.

The Court: You state your objection but not with the long statements such as you made the other day about all the things you were going to prove if you had an unlimited time to go on with cross-examination. You may object to the limitation upon the cross-examination. It will be assumed that all the proper grounds are stated and that you insist that if you had a longer time you would bring out a lot of material facts, and I am going to overrule the objection, and you have an exception.

Mr. Isserman: And I want to state one objection which your Honor hasn't suggested.

The Court: All right.

Borman—
Colloquy

Mr. Isserman: And that is an unwarranted interference with cross-examination and with the right of my clients to cross-examine this witness who has been hostile and evasive from the first moment he got on the stand.

The Court: Well, it is for me to decide whether he has been hostile and evasive.

Mr. Isserman: And I would like to add that the action of the Court in curtailing cross-examination at this time is a violation of due process and a viola-

—Ch. Tr. 4398—

tion of the constitutional rights of our clients and prevents us from putting on this record the facts which this witness has and has been concealing in his examination.

The Court: Let me have the letters—the ones that you asked for and did nothing with him.

Mr. Isserman: I did nothing because your Honor curtailed the examination.

The Court: I want them. Give them to me.

(Handed to the Court.)

Mr. Gladstein: I desire the record to show the tone of voice in which the Court demanded them—

The Court: Yes, you can put all the tone of voice you want in.

Mr. Gladstein: May I finish?

The Court: Because we are pretty near the end of this challenge.

Mr. Gladstein: Your Honor, I would like to finish my statement for the record. I wish the record to

show my objection to the tone and the manner in which the Court delivered that command as unbecoming a Court, and I object to it. I also—

The Court: There is nothing unbecoming about it. I am through being fooled in this case.

Mr. Gladstein: Now, if your Honor please—

The Court: If you don't like it you can lump it. Put

—Ch. Tr. 4399—

that down.

Mr. Isserman: I object to your Honor's remark and characterization of the conduct of counsel, and I ask that your Honor strike that remark.

The Court: Oh yes, yes, I have heard all that. Now I am sick of it.

Mr. Gladstein: Now I wish to add to my objection the unseemly remark of the Court saying that if we do not like it we could lump it. I object to it and ask the Court to withdraw and strike that statement from the record.

The Court: Yes, I refuse—I deny the motion.

Mr. Gladstein: Now I wish to take one moment to add my objection to the record, which is this, with respect to curtailing and terminating the cross-examination of Mr. Borman, that I was compelled to end my cross-examination because of the order of the Court without having completed several fields of inquiry into which I was prepared to go—

The Court: Now I don't desire further argument, Mr. Gladstein.

Mr. Gladstein: I wish to state this for the record—

The Court: I will tell you now to desist.

Mr. Sacher: May I, however, just interpose my

—Ch. Tr. 4400—

objection to having—to my cross-examination having died aborning, your Honor?

The Court: It was indicated to me this morning that the only additional counsel who desired to cross-examine was Mr. Isserman. I stated then that whoever was to cross-examine among you all would have to finish by three o'clock. Now that is my ruling and you each severally have an exception to it. Now I do not want any more.

Mr. Crockett: May I state my objection, because of the nature of the Court's ruling this morning I feel—

The Court: Do you feel it is necessary for you to add something?

Mr. Crockett: I do.

The Court: Please desist. I tell you not to.

Mr. Crockett: Well, may I take an exception to the Court's remark this morning?

The Court: You may.

Mr. Crockett: That "people of your kind," which was addressed to my colleague here, Mr. Gladstein, to me it infers something in the nature of either racial or religious bias. I would like—

The Court: Racial or religious bias?

Mr. Crockett: I mean exactly that. The Court's remark to Mr. Gladstein, "people of your kind,"

—Ch. Tr. 4401—

such and such a thing. That is a general—

The Court: I observed the conduct that you gentlemen have put on here, the sort of delaying tactics and other things that I have noted in the record

before. I had no reference to any religious or other matter of that kind, and you must know it perfectly well.

Mr. Crockett: I do not know it—

The Court: Now please sit down.

Mr. Crockett: And for that reason—

The Court: I am not going to have this jumping up.

Mr. Crockett: I would like to put my objection on the record.

The Court: Well, you have your objection on the record; you have the race discrimination in, you have everything else in. Now please sit down because I desire to put a question or two to this witness.

Now, Mr. Borman, is this the correspondence with the pastors of the various churches that you referred to in your testimony?

Mr. Isserman: I object to your Honor's question on the ground that the Court has taken over cross-examination and has not allowed me to cross-examine this witness on the letters which the Court has now handed to him.

The Court: Your objection is noted.

—Ch. Tr. 4402—

The Witness: Yes, your Honor.

Mr. Gladstein: May we have a ruling instead of just a notation, your Honor? An objection should be sustained or overruled.

The Court: Yes. It is nice of you to tell me what to do. The record will stand just as it is.

Mr. Gladstein: I ask the Court to rule whether the objection is sustained.

The Court: Yes, I know, I heard you.

Now what is the answer?

The Witness: Yes, sir.

Mr. Gladstein: I object to your Honor's failure to make the ruling.

The Court: Your objection is noted.

The Witness: Yes, your Honor. Those were the six letters.

The Court: And what is that other letter there?

The Witness: This was the one answer that we received.

Mr. Isserman: I have the same objection to every question which the Court is putting in connection with the letters.

The Court: Yes. It is a new doctrine that the Court isn't supposed to have the power to ask any questions of the witness.

—Ch. Tr. 4403—

Mr. Isserman: Not on matters on which the Court has cut off the cross examination, which came up during the cross.

The Court: This will undoubtedly help you.

Mr. Crockett: May I ask that the documents be marked at least for identification?

The Court: I am going to put them in evidence right now as Court's Exhibits.

Mr. Isserman: I object to that.

The Court: Why certainly, you object to everything.

Mr. Isserman: I object to your Honor's remark in that respect.

The Court: Well, that is fine. Go ahead.

St. Clair—Direct
Colloquy

Mr. Isserman: Now I ask for the right to cross-examine on the exhibits which this Court has put into evidence.

The Court: Motion denied.

Mr. Gladstein: Now I ask for the right to question on the documents which the Court has put into evidence—

The Court: Motion denied.

Mr. Gladstein: May I finish? —for the reason that the documents contain statements and those are statements which show the involvement of Judge Knox in this matter, and also the letters happen to

—Ch. Tr. 4404—

be signed not by this witness but by the clerk, and I desire to examine as to this witness's knowledge of and connection with the letters, the manner in which it was determined and the circumstances under which it was determined to send such letters.

The Court: All right, I will give you ten minutes to do it.

Hand him the letters.

* * * * * *

—Ch. Tr. 4498—

New York, February 28, 1949

* * * * *

Mr. Gladstein: I have a few questions to ask of the witness.

By Mr. Gladstein:

Q. Mrs. St. Clair, did you ever obtain information from the clerk of this court during the years you were submitting the lists of names as to the percentage of those names who were found qualified and who became jurors?

Mr. Gordon: Objection.

(Question read.)

The Court: Sustained.

Q. Did you ever check with the clerk to ascertain from one year to another the extent to which the names you were submitting of people actually went into the jury system?

Mr. Gordon: Objection.

—Ch. Tr. 4490—

The Court: Sustained.

Q. Do you have any indication from the clerk or anybody connected with the clerk to indicate the extent to which the names that your Association submitted on these lists that have been put in evidence here today, actually became people in the jury system, grand or petit?

Mr. Gordon: Same objection.

The Court: Sustained.

Q. Can you deny—

Mr. Gordon: I object to that.

The Court: You know this is direct examination

and you have had a good deal of experience and know how to put questions.

Mr. Gladstein: I withdraw it.

Q. Is it a fact, Mrs. St. Clair, that a majority, to your knowledge, of the people who became grand and petit jurors in this court came from the lists that your Association submitted?

Mr. Gordon: Your Honor, I cannot characterize the conduct of counsel.

The Court: You object?

Mr. Gordon: I do object.

The Court: I sustain the objection.

Mr. Gordon: It is obviously for propaganda purposes.

—Ch. Tr. 4500—

Q. Mrs. St. Clair, did you ever get word from Mr. Tanner or Mr. McKenzie or Mr. Borman, Mr. Follmer or any of the officials of this court advising you that they were satisfied with the type of people whose names were on the lists that your Association submitted?

Mr. Gordon: Same objection.

The Court: Sustained.

Mr. Gordon: And I object to further questions along this line, on the ground they are leading in the direct examination of counsel's own witness.

Q. Whose idea was it, Mrs. St. Clair—

The Court: I will make no direction because of this limitation of time.

St. Clair—Direct
Colloquy

Q. Whose idea was it to have the Association, your Association, prepare and procure these names and prepare lists and submit them to the clerk of this court?

Mr. Gordon: I object.
The Court: Sustained.

Q. Do you know, Mrs. St. Clair, who proposed, during any period of time when you were connected with the Association and had the relations you have already described with the clerk's office of this court, do you know at whose suggestion the idea was developed of your Association preparing these lists such as have been introduced in evidence —Ch. Tr. 4501— here today?

Mr. Gordon: I object as irrelevant.
The Court: Sustained.

Q. Whose idea was it, Mrs. St. Clair,—

The Court: You are proceeding as though you were cross-examining. This is your witness.

Mr. Gladstein: It is not my witness. I did not call this witness.

The Court: Oh, do you claim you are entitled to cross-examine as though a witess called by the prosecution?

Mr. Gladstein: It is not a witness called by me and it is a witness who has never accommodated me or discussed anything with me or indicated any willingness to discuss any of the testimony she was to give.

The Court: Well, I do not think the test of whether

a witness is being examined on direct examination or cross-examination is whether counsel has had the privilege of conversation with the witness. In any event, I will rule on the questions as they arise.

* * * * *

—Ch. Tr. 4538—

* * * * *

Q. Now at the time,—this is part of May, 1942—were you a director in the Solvay American Corporation?

Mr. Gordon: Objection.
The Court: Sustained.

Q. Were you a director then of the Mexican Light & Power Company?

Mr. Gordon: Objection.
The Court: Sustained.

Q. Were you not a director of the Barcelona Light & Traction Company?

Mr. Gordon: Objection.
The Court: Sustained.

Q. Were you a director of Securities, Limited?

Mr. Gordon: Is there any way in which we can

—Ch. Tr. 4539—

stop this line?
Mr. Gladstein: No, there is not.
The Court: Mr. Gladstein, you may pursue that

inquiry as far as you choose but I shall continue to rule the same way. It does not seem to me to be material here as to how many directorships this witness held, and as far as the book is concerned if you desire to note the fact if it be the fact that his name was in that directory. I will permit you to do that.

Mr. Gladstein: I have a late edition, and not the one that was current then.

The Court: The question is how they administered the jury system—

Mr. Gladstein: And who administered, and with what biases, prejudices and interests.

The Court: I don't think it is material to ask each one of the men who administered the system where he lives and who he married and how much money he has or how many directorships he has or how poor he was; all those circumstances seem to me to have no bearing.

Mr. Gladstein: However, your Honor will permit me to ask the question?

The Court: I certainly will. I don't see any reason why you should not except for the passage of time.

—Ch. Tr. 4540—

Q. Were you also, as of May 1942, a director of Amitas, which was a corporation?

Mr. Gordon: Objection.

The Court: Sustained.

Q. Were you then a director of Compagnie Hispana Americana, Spain?

Mr. Gordon: Same objection.

The Court: Sustained.

Q. Were you a director of the Missouri, Kansas Pipeline Company?

Mr. Gordon: Objection.

The Court: Sustained.

What purpose can be served, Mr. Gladstein, by you reading them off? You might go on with a thousand. I would always rule the same.

Mr. Gladstein: Not a thousand, because he was not a director of a few corporations.

The Court: If it is to give the impression that the facts are as stated in your questions, despite my rulings that the questions are not relevant, then I think you are doing something that it is not proper for an attorney to do.

Mr. Gladstein: I am sorry, your Honor. I am prompted to disagree with your Honor's view.

The Court: Well, you may proceed, but I am begin-

—Ch: Tr. 4541—

ning to suspect that if it is another instance of what we have had earlier in this trial, and you ought to know better than to try to convey the impression as to what the answers might be by the iteration of questions to which I have sustained objections,—

Mr. Gladstein: Then in that event I will have to refer for the record to Mr. J. Donald Duncan, who—

Mr. Gordon: I am going to object to Mr. Gladstein, under all the circumstances, reading from a book which was offered in evidence and was rejected.

The Court: I have told Mr. Gladstein if he desires to have it appear that Mr. Duncan's name is in the book I will permit that, but I will not permit him to go on to say the number of different corporations he

claims he is a director of except those that I have ruled out.

Mr. Gordon: If Mr. Gladstein will show me the page in the book, I will agree his name is in there if it is.

Mr. Gladstein: On page 1912 of Poor's Register: Mr. J. Donald Duncan—

Q. Were you born in 1894? A. Yes, sir.
Q. At East Orange? A. Yes, sir.
Q. A graduate of Columbia University—

The Court: Now that it seems to me is open to the same objection I voiced a minute or two ago.

—Ch. Tr. 4542—

Mr. Gladstein: I just want to identify the gentleman as being the one who is here.

The Court: I understand that you say it, but it sounds a little devious to me.

Mr. Gladstein: Nothing devious. It indicates this is the Mr. J. Donald Duncan.

The Court: It has been conceded by Mr. Gordon that his name appears in the book.

Mr. Gladstein: In that column about six lines above the bottom commences the name of Mr. Duncan.

The Court: I did not permit you to read it.

Mr. Gladstein: I just want the record to show what I am talking about. I am not going to read—

The Court: Then I will change my ruling and the reference to the book is out. If you choose to abuse the matter that way I will dispose of it.

Duncan—Direct
Colloquy

Q. Were you a director of Sofina which is an international cartel?

Mr. Gordon: Same objection.

The Court: Sustained.

Mr. Gladstein: And I also want to say for the record that Mr. Duncan's name appeared as a director— .

The Court: I have withdrawn my permission to state his name was in the book. I found after I did that you did what seemed to me to be abusing the

—Ch. Tr. 4543—

privilege, so you may not make reference to his name appearing in other books. I consider it entirely irrelevant.

Mr. Gladstein: I offer to prove that if the witness were permitted to answer the questions I have put to him, and other questions of the same nature, he would testify in answer to those questions—

Mr. Gordon: I object to this.

Mr. Gladstein: I am making an offer of proof.

The Court: Mr. Gladstein, I consider the questions which you asked, and as to which I sustained objections, as clearly showing what you offered to prove and I direct you to desist in making any further statement of an offer of proof, or alleged offer of proof, in connection therewith.

* * * * * *

—Ch. Tr. 4559—

* * * * * *

Mr. Gladstein: I have no further questions, with this exception: I now ask the Court to reconsider

and reverse its previous ruling with respect to the document, and I want to argue some law. This is a document, which is a letter written by this witness—

The Court: I am afraid, Mr. Gladstein, that you are not going to have the opportunity to do it. I have ruled that I will hear no argument on matters, at the time that I announced it, and I have given that careful thought and consideration. It came up before, and I do not desire to hear further argument.

—Ch. Tr. 4560—

Mr. Gladstein: But, your Honor, upon the pretext that this is a confidential document, the one that I am asking about, the one that was written by this witness, you are preventing me from showing without any question the final proof of the corruption of the system here in so far as they placed in charge of it a man who was the director of a dozen corporations, who—

The Court: Mr. Gladstein—

Mr. Gladstein: May I finish, Judge?

The Court: I consider your language offensive and not fitting for an officer of this court to use when you speak of a ruling by the Court as done under a pretext, and use such other language as you used there. You must know that you are doing something that you should not do, and I direct you to desist.

Mr. Gladstein: Your Honor, I ask that you consider the law that applies to this question because—

The Court: I heard what you said.

Mr. Gladstein: Do you refuse to have a memorandum of law submitted to you?

The Court: And I consider the language offensive.

Mr. Gladstein: Do you—

The Court: And you know, you know that it is, but of course it may be pleasing to some of the people.

—Ch. Tr. 4561—

Mr. Gladstein: Well, that is not—I have never said anything—

The Court: But that is an additional reason why you should not do it.

Mr. Gladstein: I have never said anything for the purposes of pleasing anyone here but for the purpose of trying to put in evidence and to persuade your Honor to do what I think the law requires.

The Court: Well, you are not going to provoke me, so you might as well stop doing that.

Mr. Gladstein: I want to make an offer of proof concerning this letter which, according to the witness's statement, is in this building and readily available and which, by the way, Mr. Duncan, it was called for in the subpoena that was served on you—isn't that so?

The Court: I direct you not to make this one. It is already sufficiently evident in the case what the paper is and what your claims about it are, and mere repetition of it will only serve to use up your time that you can employ to better advantage.

Mr. Gladstein: All right. Let the record show that it is a letter written in May 1942 by Mr. Duncan, the present witness, and let the record further show that I called for that letter, and for the letter or

questionnaire in which it was a response, to which it was a response—

—Ch. Tr. 4562—

The Court: Now Mr. Gladstein, you have again done what I have told you not to do.

Mr. Gladstein: I want the record to show that I had the subpoena served on this witness. Can it not show that?

The Court: I understand what you want, but the accumulation of these acts of disobedience to my rulings is something that concerns you, and I hope that you won't keep at it any more.

* * * * * *

—Ch. Tr. 4589—

Mr. Gladstein: Now I make an offer on my own behalf that this be received. You will recall—

The Court: Do you consider what Mr. Connolly testified to as verifying each statement of fact in the book?

Mr. Gladstein: I am offering it as admissible because the introduction, which he says was subtantially the same in the 1946, 1947 and 1948 issues covers the issue or the copy which Mr. McKenzie used in 1947.

Mr. Gordon: I don't think the book is relevant to the challenge, your Honor. Mr. McKenzie said he sent somebody up to the library—and now I have

—Ch. Tr. 4590—

got confused about this once before because I did not know how many directories of directors there were and I don't want to make a misstatement—

The Court: I will hear you, Mr. Gladstein, and I am hopeful. I did not understand just what the book purports to prove that is relevant here so if you have a brief argument I will listen to you.

Mr. Gladstein: Yes, sir. I will make it as brief as possible. Mr. McKenzie testified that in 1947 Poor's Register of Directors was used as a source from which to obtain the names of jurors. Mr. Connolly has testified that the introduction contained in Challenge Exhibit 22 for identification is substantially the same, except for changes in figures as that introduction which appears in the 1946, 1947 and 1948 editions of Poor's Register of Directors, because the introduction in Challenge Exhibit 22 states, in part, that Poor's Register of Directors and Executives covering the entire United States is the only national directory of important people published in this country. It goes on to state additional facts—

The Court: Oh well, then I will sustain the objection.

Mr. Gladstein: I thought when you heard the facts you would, Judge.

—Ch. Tr. 4591—

Mr. Gordon: I move to strike that out.

The Court: Yes. That is another one of those remarks, Mr. Gladstein, that is exceedingly impertinent and sarcastic and I don't think you should do it. You just keep it up. Evidently you have some purpose in mind, but I direct you not to do it again.

* * * * *

—Ch. Tr. 4663—

New York, March 1, 1949

* * * * *

Q. And "Furrier, any factory or shop" is a manual worker? A. A furrier who works in any factory or shop is a manual worker.

Q. Well, what does it say in the book? A. It says that.

Q. Where does it say "who works"?

Mr. Gladstein: Are you saying—

A. Furrier is a manual worker except as a dealer.

Mr. Gordon: Your Honor—

The Court: Yes, I do not understand why you do not do what counsel asks you to do.

Mr. Gladstein: Which is what, read the book that is in evidence?

The Court: To read the title as it appears in the book.

Mr. Gladstein: Does your Honor want the witness to read what is in evidence?

The Court: That is precisely what I told her to do.

Mr. Gladstein: All right, I am sure the witness will be glad to accommodate the Court.

The Court: Yes.

Mr. Gordon: I take it that these interruptions don't come off the cross-examination?

—Ch. Tr. 4664—

The Court: Well, that is part of Mr. Gladstein's studied insolence. I understand it perfectly.

* * * * *

—Ch. Tr. 4700—

Q. Do you recall making this statement in addressing the Association: "Each of you occupies a prominent place in this community"—

Mr. McGohey: If you Honor please, I object to reading anything from this document. If it is going to be offered in evidence let us find out if it is going to be admissible.

Mr. Sacher: All right. I offer it in evidence.

Mr. McGohey: I object to it.

—Ch. Tr. 4701—

The Court: Objection sustained.

Mr. Sacher: Will your Honor hear me at all on this?

The Court: No, Mr. Sacher. I told you this morning that statements, whether they are in speeches or books or wherever they may be, are not, in my view, competent evidence. I think it is better now to address yourself to the facts, to ask the witness on matters of which he has personal knowledge.

Mr. Sacher: But the Judge—

The Court: Not the matter of the speeches and the books and things of that kind. Now you have done quite a little of that, and I think it is better for you now to address yourself to things that the witness actually did and what he saw and observed. You know, that word "know" we have had that come up two or three times already, and it is very easy for a person to say that he knows this or that when all he means by it is that he has been informed by somebody that that is a fact.

Darr—Gross
Colloquy

Mr. Sacher: Your Honor—

The Court: I suggest—

Mr. Sacher: Your Honor, I wasn't present at the discovery of America but I believe with all the faith I have that Christopher Columbus discovered it in 1492.

—Ch. Tr. 4702—

The Court: Well, I will strike that remark out.

Mr. Sacher: But I would like to make one brief observation—

The Court: I will rule now, Mr. Sacher, that you should address yourself to questions within the witness's knowledge of what he observed, and that you leave for the moment the matter of speeches and addresses and things of that kind which I feel are entirely incompetent and inadmissible.

• • • • • •

—Ch. Tr. 4781—

• • • • • •

Mr. Sacher: May I respectfully say to your Honor that membership in the American Youth for Democracy has no bearing on the credibility of this witness than the fact that Judge Knox is director of two of the biggest corporations in this country.

Mr. Isserman: Or that your Honor is in the Social Register.

—Ch. Tr. 4782—

The Court: You see, you are beginning to get into that same old sort of thing that we drifted out of

a week or two ago, and I think it is better to just make the objection and eliminate the arguments.

Now I overrule the objection, and the witness will answer the question.

Mr. Gordon: Will you read the question?

The Court: Please bear in mind, Mr. Darr, that when you do what you did a moment ago, to make a little speech, it is not very relevant to the question. I think you would do better to avoid it.

Mr. Gladstein: Let the record show my objection to the Court's gratuitous and improper characterization of the witness's testimony, as an effort to make a speech—

The Court: You may—

Mr. Gladstein: Well, I would like to finish what I have to say, because having—

The Court: Mr. Gladstein, this is one time when you are not going to finish what you want to say.

Mr. Gladstein: I object to the Court's statement.

The Court: Very well.

Mr. Gladstein: And I except to the ruling.

. . . . . .

—Ch. Tr. 4817—

. . . . . .

Mr. Sacher: May it please the Court, I am impelled to rise because I believe that today's manner of the conduct of the trial constitutes something in the way of the characterization of all that your Honor has done throughout the trial of this challenge.

Colloquy

The Court: Well, you know I said I did not de-
—Ch. Tr. 4818—
sire to hear argument and I have been called so many things during this trial here that I suppose I can stand being called a few more. But it seems so unnecessary. Your record is complete here. If your objections are well taken why then you will get that reversal that you and your colleagues have so often proclaimed as the inevitable consequence of the result of my rulings. There it rests. I see no advantage to be gained by your further excoriating me and I direct you not to do it.

If you have some motion to make I will hear the motion, but I don't want to hear any more argument.

TRIAL TRANSCRIPT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C. 128-87

UNITED STATES OF AMERICA

—vs.—

WILLIAM Z. FOSTER, EUGENE DENNIS, also known as Francis X. Waldron, Jr., JOHN B. WILLIAMSON, JACOB STACHEL, ROBERT G. THOMPSON, BENJAMIN J. DAVIS, JR., HENRY WINSTON, JOHN GATES, also known as Israel Regenstreif, IRVING POTASH, GILBERT GREEN, CARL WINTER, and GUS HALL, also known as Arno Gust Halberg.

Before:

HON. HAROLD R. MEDINA,

District Judge,

and a Jury.

New York, March 7, 1949

10.30 a. m.

. . . . . .

—Tr. Tr. 4—.

. . . . . .

Mr. McCabe: Yes, your Honor. My reason for interrupting was that I wished at this time to renew

and repeat a motion which has heretofore been made and denied, that is the motion that your Honor now disqualify himself from further proceeding in this case. It has seemed to me that the circumstances which arose during the course of the trial of the challenge more than justified our allegation that your Honor's state of mind was not one of detachment and freedom from bias. I felt that that developed and progressed through the trial, and was demonstrated fully in the circumstances surrounding the conclusion of the trial of the challenge, the cutting off of evidence and the refusal to hear oral argument, the necessity for which I think appeared in the opinion which your Honor filed.

I have gone through the transcript not in great detail but in sufficient detail it seemed to me to demonstrate fully that your Honor deprived us of the right to present our argument fully and fairly to the extent of occupying the time necessary to develop our point. I developed some quotations, and I do not wish, of course, to burden this argument with a repe-

—Tr. Tr. 4-A—

tition of those quotations at this time which indicate both the bias which your Honor showed, the sarcastic approach which your Honor adopted towards the argument of counsel and toward our evidence. Your Honor's cutting us off in our proof and directing the order of proof seemed that your Honor was quick to jump upon the slightest mote in the eye of any defense counsel, witness—

—Tr. Tr. 5—

The Court: Do you think you need to elaborate very much longer, Mr. McCabe?

Colloquy

Mr. McCabe: No, I do not, your Honor.

The Court: Because I want to indicate to all counsel now that I am not going to permit any more lengthy arguments or repetitious arguments during this trial when I have the jury present. I shall expect counsel to make argument when the Court desires argument, and when I feel sufficiently informed to rule the matter will rest there.

* * * * * *

—Tr. Tr. 22—

The Court: I do not think I want to hear any more argument on it, Mr. Crockett. You made so many motions, you and your colleagues, about the press and about this alleged propaganda against the defendants, and so on, and it is really a renewal of the same motions that I have denied repeatedly before.

Mr. Crockett: Well, will the Court permit me to just enumerate the occurrences that I desire to refer to?

The Court: No, I do not think so. I find that the slightest opportunity we have these long arguments that I cannot help but feel are meant for purposes of outside the Court rather than to influence the Court in its decision, an dit seems to me that unless there is something different in character from what you have already adverted to, it may be omitted. Now if it is just the sort of thing that you have already spoken of, and it is merely an accumulation of further instances, I do not think that I require

to have it, unless it is something of a different character that you pressed upon me earlier, not only on former occasions but earlier this morning, why, I will hear it. I do not desire to cut off argument that is to the point but I do feel that there must be some point at which this repetition must cease.

* * * * * *

—Tr. Tr. 27—

* * * * * *

Mr. Crockett: If the Court please, I should like at this time that the trial of this case be continued for the period of 90 days, and in support of that I reoffer the affidavit of the defendant Benjamin Davis.

I have only one argument I should like to address to the Court and that is it might very well be that at the expiration of the 90-day period the Court would be in a better position to assess the extent to which the minds of the public have been influenced by the wave of propaganda to which I have referred and therefore to determine whether or not it will be possible in the future for these defendants to obtain a speedy trial before an impartial jury, and I respectfully submit the trial should be continued for the period of 90 days.

Mr. Gladstein: May I say something on that point?

The Court: Yes.

Mr. Gladstein: I gather from your Honor's remarks this morning the Court regards speed as something of a virtue—

Colloquy

—Tr. Tr. 28—

The Court: Well, I don't know. A good many people have different opinions on that. You have always been arguing, you and your colleagues, that I have been rushing you to trial. It has not seemed that way to me.

Mr. Gladstein: That is a matter of opinion.

The Court: And I suppose you and I cannot be expected to agree on that.

* * * * *

—Tr. Tr. 93—

Mr. Gladstein: If your Honor please, I wish to file a challenge to the array of jurors on a motion to quash and dismiss the petit jury panels of March 1, 1949, and March 7, 1949. I notice it says "8th" on the face of the document but I assume that can be deemed to be corrected to say the 7th, as I am advised by the clerk of the court that the jury which your Honor was calling for a moment ago is the petit jury panel of March 7, 1949.

Will you give this to the Judge, please (handing)? And I have a copy for Mr. McGohey (handing). And I wish to call attention—

The Court: You better wait until I read it first.

Mr. Gladstein: Very well, your Honor.

—Tr. Tr. 94—

The Court: I do not wish to hear argument on it, Mr. Gladstein.

Mr. Gladstein: I simply wanted to say this: When I handed your Honor the papers it was 17 minutes to three. When your Honor just put the papers back

on his desk and looked up indicating he had read the papers it was, and is, 15 minutes to three. It seems to me, your Honor, I should be permitted to point out the respects in which this challenge presents new matter to which the Court's attention has not heretofore been called. Moreover, this is a challenge—

The Court: Did you hear me say I did not desire to hear argument, Mr. Gladstein?

Mr. Gladstein: All right. Then I desire to put in evidence, and I want to call two witnesses whom I have under subpoena.

The Court: Let us hear what Mr. McGohey says first, and I will rule on it now.

Mr. McGohey: If your Honor please, I have read these papers substantially and I find that there is contained in these papers the same kind and substance of challenge that we have been trying for seven weeks, and indeed, I find that in the notice of motion it says, "That said challenge and motions will be based on all the records, papers and files in this proceeding, the affidavit of Henry Winston filed

—Tr. Tr. 95—

herewith, and evidence to be introduced at the hearing of the challenge and motions, and some memorandum of authority."

I take it there is included in the description all of the evidence and all of the charges and all of the testimony we took during seven weeks. I understood that challenge to go to the whole system of offering jurors here and to the whole system of list of names that have been and are compiled in the

jury clerk's office pursuant to that system, and I take it that that challenge included any jury drawn prior to the time that the challenge was made or drawn while the challenge was in progress, or that would be drawn in the future from jurors whose names had been placed in the jury files in accordance with the system which was under the challenge, I therefore submit that to make the motion now made is merely a repetition of the motion we have been considering for seven weeks and which your Honor, after consideration denied with an opinion. I am opposed to the taking of any testimony or spending any more time on the challenge and I urge that it be denied.

The Court: Both for the grounds mentioned and others I overrule the challenge and deny the motion.

Mr. Gladstein: May I point out that there is nothing in the record at the present time to show

—Tr. Tr. 96—

that the March 7, 1949, panel was drawn in the same manner and from the same group of names from which prior panels have been drawn, and I would desire to have evidence on that score and if it be the fact that the March 7th panel was drawn from the same file—

The Court: Mr. Gladstein, do you remember I said I did not desire to hear argument on this?

Mr. Gladstein: That is on behalf of the challenge.

The Court: If you persist I shall not try to stop you.

Mr. Gladstein: No. I am trying to reply to Mr. McGohey's point. I do not want the record left in

the condition where it may later be argued that we failed to establish that the March 7th panel was drawn in that particular manner, and the sources from which the names came, and I desire to put Mr. McKenzie, who is under subpoena, and Mr. Duncan, the jury commissioner, who is under subpoena, on the witness stand, and I ask leave to put them on now, and if it develops that names on the March 7th panel were drawn from the same file of jurors, then to the extent that we have already put in evidence on that subject I certainly would not want, and would not attempt, to go through the process of putting on similar evidence. I do reserve the right to put on

—Tr. Tr. 97—

evidence as to evidence concerning this petit jury panel which is here now, and I certainly have the right, I submit, to call these witnesses to establish just how the people who are on this panel happen to get there, including all of the presidents and officers here of fantastically large numbers of corporations—

The Court: Mr. Gladstein, what do you think the Court should do where an attorney is repeatedly told to desist from argument and he continues? Do you desire me to make some sort of brawl out of this proceeding? I am accustomed to having attorneys treat my directions with respect.

Mr. Gladstein: I would like a ruling on my right, and I would like to have the record show I desire now to have the court attache call Mr. Duncan or Mr. McKenzie, I don't care which, first to the stand at this time.

Colloquy

The Court: But the challenge has been overruled and your motions have been denied.

Mr. Gladstein: Has your Honor ruled I am prevented now from putting on the testimony of these witnesses?

The Court: I certainly have. You are not going to have any more testimony about the jury system. We are going ahead with the trial, Mr. Gladstein.

Mr. Gladstein: But, your Honor, may I have a ruling? Is it your Honor's ruling that I am now

—Tr. Tr. 97A—

prevented, despite my offer to introduce evidence, from putting on testimony concerning the March 7, 1949, panel?

The Court: I have ruled, Mr. Gladstein, that the challenge and motions that you have just submitted to me are respectively overruled and denied and the incident is closed.

* * * * *

—Tr. Tr. 99—

Mr. Gladstein: Now at this time I wish to move for a severance of the cases of these defendants and request the Court to order the severance of each and every of 10 of the cases of the defendants, and order that the trial, if it proceed at all, proceed against one only of the defendants. * * *

* * * * *

—Tr. Tr. 104—

The Court: You do not need to cite cases on such elementary propositions. These conspiracy trials go on all the time, and I do not want to hear any more argument on it. The motion is denied.

Colloquy

—Tr. Tr. 105—

Mr. Gladstein: Now, your Honor, I want to call your Honor's attention to the fact that the Second Circuit Court of Appeals, of this circuit, and other courts, the Supreme Court of the United States, state decisions in New York, have recognized that in matters of this kind, cases of this kind, it is not a discretion—

The Court: Do you realize that I just told you that I do not want to hear any further argument on it?

Mr. Gladstein: Because of your Honor's direction which I construe as a requirement that I be seated and proceed no further with my motion for a severance, I am required to do that, and I reserve the right, of course, to file, as I will, a full motion for severance and supported by such arguments—

The Court: No, you won't file any such formal motion. You can just let the matter rest where it is. The motion for a severance is addressed to the discretion of the Court. I am familiar with the authorities on the subject. I don't need any argument on the law. You have stated such facts as you relied on and I see no occasion for putting in any written motion papers.

Mr. Gladstein: But your Honor cannot cite properly that I have cited such facts as I want to rely on because you haven't given me—

—Tr. Tr. 106—

The Court: Well, you are arguing on the law, and I am beginning to get the same sort of impression I got after two or three weeks of that other proceeding there. Now I have denied this motion

and I do not desire to hear any further argument. I do not like to be unpleasant to lawyers and tell them to sit down and do things like that. I don't act that way. It is contrary to my nature to do it, but when I tell a lawyer I don't desire any further argument, why I expect him to desist, and you would be surprised to see how many times you and your colleagues have utterly disregarded such instructions by me.

Mr. Gladstein: I was not going to disregard them; I simply wanted the record clear that my restraint and my refraining from continuing was based upon my construction of your Honor's statement as a direction and a ruling to sit down and not continue with this presentation.

The Court: Well, I don't regard it as "restraint" when a lawyer obeys a direction of the Court. I have never known any of you gentlemen particularly to restrain yourself in this case, but possibly the time will come when you will.

* * * * * *

—Tr. Tr. 134—

* * * * * *

The Court: You know, Mr. McCabe, I am beginning to get the impression that you gentlemen are trying to keep talking so long this afternoon that we won't have any jurors in, but I will let you know now we are, so if you talk on for half an hour or longer you are going to start having the jurors come in just the same.

Mr. McCabe: I thought that was obvious.

Mr. Gladstein: And I think I should let the Court know when I make our motions it is to make a serious motion.

The Court: Some have not sounded very serious.

Mr. Gladstein: And our expectation is our motions will receive serious attention.

The Court: That is what they have been receiving.

Mr. Gladstein: And as far as the hours are concerned the Court, your Honor, will recall in our desire to introduce more evidence on the question of the challenge last week and the week before we requested that the hours of hearing be lengthened and we announced our being prepared to spend time in evening sessions because of your Honor's limita-

—Tr. Tr. 135—

tion of our right to put in evidence and you made it impossible for us to do so within the time limit, and I want to object for the record to the characterization your Honor has made that it seems to your Honor that we are speaking about these matters simply for the purpose of using up time. Judge—

The Court: If this has not been stalling this afternoon I never observed it in my life.

Mr. Gladstein: Then I want to say I will stall in an effort to get for my client the constitutional right to a public trial which we have not had today because first, by virtue of an order either from your Honor or from Mr. Saypol people were excluded and, secondly, your Honor made an announcement here in court countermanding the order that excluded the public and here we are at four o'clock and people are

still being excluded, and I say that what your Honor has done today, either directly, indirectly, actively or passively, constitutes a denial of a public trial and I object to it and I ask a voiding of the proceedings since this morning and an opportunity to make in public every motion that I desire to make in the interests of my clients.

The Court: Mr. Gladstein, that word "indirectly" I consider offensive and not respectful to the Court.

Mr. Isserman: If the Court please, I object to your Honor's characterization of the conduct of

—Tr. Tr. 136—

counsel as stalling and also respectfully object to the Court's remark about misrepresentations. I was at the door only a few minutes ago and heard the captain of the guard tell Mr. McCabe, "My orders are my orders, and I admit no one." But I call this to the Court's attention in view of the fact that the courtroom is as empty as it has been all day.

* * * * *

—Tr. Tr. 141—

* * * * *

Mr. Sacher: I respectfully submit, your Honor, that in this case it is appropriate that there should be direct examination by counsel themselves instead of through the Court. Among the reasons that I have to advance in support of that proposition are the following: As I envisage this case this is fundamentally comparable to the so-called criminal libel or seditious libel cases in which I regard the function

of the jury to be to decide the law as well as the facts as they do in criminal libel and seditious libel cases, and in those circumstances I think it is of the utmost importance that there should be an immediate and direct contact between counsel and jurors.

In that connection I should like to observe that

—Tr. Tr. 142—

Judge Knox had occasion to say in his book "a Judge Comes of Age" the following at page 250: Speaking of the trial of Attorney General Daugherty he said the first day was entirely spent in selecting the jury.

There is really nothing funny about this.

The Court: I was just thinking it was only a little while ago you were talking about Judge Knox's book in a rather different way. But you can do that. That is all right.

Mr. Sacher: But this is a statement of fact.

The Court: I am not going to stop smiling when I see some occasion to smile just because Mr. Sacher does not like it.

Mr. Sacher: It is not the smile. I welcome smiles. I indulge in them a good deal but I don't think you ought to treat this argument with levity because I think it is an important question.

* * * * *

—Tr. Tr. 406—

New York, March 10, 1949

* * * * *

The Court: Perhaps the argument will be included as you specify. Do you think it necessary to do so?

Colloquy

Mr. McCabe: I think I have—in order to avoid repetition I made some notes here and I think I can get them briefly on the record. I think some of them have already been made but I think they should be repeated at this time, your Honor, after the examination.

The Court: They are not sufficiently manifest in the numerous questions that have been submitted to me and which I have rejected?

Mr. McCabe: I think not, your Honor.

The Court: Will your colleagues get up and repeat the same objections that you are making?

—Tr. Tr. 407—

Mr. Gladstein: I think that kind of question, to which I want to object, is obviously improper. We have minds of our own and we will use them.

The Court: You see, repetition, Mr. Gladstein, I tried to avoid it. Do you mean to assure me that you will not repeat what Mr. McCabe is just saying? Is that what you rise to say?

Mr. Gladstein: No. I rose simply to say this, that neither Mr. McCabe nor anyone else should be asked by the Court to speak for me, and I certainly will make no effort to speak for any other attorney who represents his clients.

The Court: Very well.

Mr. Gladstein: I represent mine.

The Court: Very well, I will hear the repetition, if there be any.

* * * * *